



March 10, 2017

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington DC 20554

Re: Notice of Ex Parte Communication, MB Docket Nos. 14-50, 09-182

Dear Ms. Dortch:

The Commission has before it a petition for reconsideration filed by Connoisseur Media, LLC in the above-captioned proceedings concerning the Commission's media ownership rules.<sup>1</sup> Connoisseur seeks reconsideration of the Commission's rejection of its proposal concerning analysis of a broadcaster's compliance with local radio ownership rules when addressing stations in "embedded markets."<sup>2</sup> The National Association of Broadcasters (NAB) supports Connoisseur's petition and below suggests a refinement that considers the signal coverage of an embedded market station within the parent market as a means of determining whether a station competes in the parent market, and in turn, should count toward the parent market's local ownership limits.

As the Commission noted when rejecting Connoisseur's proposal, application of the Commission's ownership rules turns on whether an embedded market station also competes in the parent market.<sup>3</sup> Relying on Nielsen data, the Commission currently presumes that all stations in an embedded market compete in the parent market.<sup>4</sup> As a

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<sup>1</sup> Petition for Reconsideration of Connoisseur Media, LLC, MB Docket Nos. 14-50, 09-182 (Dec. 1, 2016) (Connoisseur Petition).

<sup>2</sup> *Id.* at ii; 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Second Report and Order, 31 FCC Rcd 9864, 9903-04 ¶ 102 (2016) (Order).

<sup>3</sup> Order, 31 FCC Rcd at 9904 ¶ 102.

<sup>4</sup> *Id.*

result, owners of embedded stations must comply with the limits not only in their own embedded market, but also in the parent market.<sup>5</sup> Being routinely counted as part of two markets is unique to these embedded markets, despite there being many other markets adjacent to each other where stations in one market could compete with those in another market. In the Order, the Commission conceded that the current rule “could result in certain stations being counted for multiple ownership purposes in a market in which they do not actually compete.”<sup>6</sup> Connoisseur and other radio owners seek more flexibility to invest in local stations in embedded markets. NAB’s proposal would complement the Nielsen analysis and more accurately capture only those stations that truly compete in the parent market, fostering greater investment in embedded markets while maintaining limits on parent market consolidation.

NAB understands the Commission’s resistance to an unbounded rule change, but as discussed below, virtually all stations licensed to communities in the embedded market do not compete in the relevant parent market. To provide the Commission with a more certain test of which embedded market stations compete in the parent market, NAB proposes that stations licensed in an embedded market with signal coverage of less than 50 percent of the parent market’s population should not be considered part of the parent market for purposes of the local ownership limits. Stations with less than 50 percent population coverage simply cannot compete in the parent market, and should not be counted toward local ownership limits in the parent market.<sup>7</sup>

Per Connoisseur’s analysis of FM stations in the New York City market, all FM stations licensed to communities in the core New York City market have 60 dBu coverage of at least 69% of the population of all of the listeners throughout the New York City parent market, and most have 60 dBu coverage of at least 80% of the population.<sup>8</sup> In contrast, the majority of stations licensed in embedded markets cover less than 25 percent of the population of the parent New York City market.<sup>9</sup> Given these signal limitations, embedded market stations are not meaningful competitors to stations in the core market, whether for advertising clients or listeners.<sup>10</sup>

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<sup>5</sup> As noted by Connoisseur, this issue arises in the two parent markets that have multiple embedded markets: New York City and Washington, DC. Owners of embedded market stations in these regions may be limited in the number of stations they can acquire in embedded markets because of the local ownership limit in the parent market.

<sup>6</sup> *Id.*

<sup>7</sup> See Letter from David Oxenford on behalf of Connoisseur Media, LLC, MB Docket Nos. 14-50, 09-182, at 2 (June 7, 2016) (explaining embedded market “signals simply do not reach the entire market, and because of these coverage deficiencies, they likely will never be full market competitors”).

<sup>8</sup> *Id.* at 3.

<sup>9</sup> *Id.*

<sup>10</sup> Connoisseur also analyzed the audience listening share of rated stations in the New York market and found that the audience share of embedded market stations pale in comparison to the ratings of almost all stations licensed in the core market. Even if the Commission’s rules allowed one entity to own every embedded market station in the New York market

Adopting the proposal described herein would not disrupt the Commission's goal of ensuring that stations that compete in the parent market are counted for purposes of the parent's local ownership limits. Rather, the proposal merely articulates a reasonable standard, based on real-world circumstances, for determining whether a station competes in the parent market. Although the Commission stated it will entertain market-specific waiver requests,<sup>11</sup> NAB agrees with Connoisseur that case-by-case adjudication of waivers does not provide enough certainty to radio licensees to engage in transactions.<sup>12</sup> While the Commission's concern relates to competition in the parent market, the effect is to hinder investment in embedded markets,<sup>13</sup> and preclude transactions designed to improve the economic viability of radio stations and the service provided to consumers.

NAB respectfully requests that the Commission reconsider its treatment of radio stations in embedded markets under the ownership rules, which currently burden such licensees based on a false presumption that they compete in a parent market. Adopting a standard based on signal coverage would allow marketplace dynamics to govern while protecting against unreasonable market consolidation in parent markets.

Respectfully submitted,



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(which could not be done in light of ownership limits in the embedded markets themselves), that entity would still be only the third largest player in the New York market. *Id.* at 2; see also Connoisseur Petition at 6, 7 n.10 ("According to BIA Media Access Pro, there are 44 stations in the Nassau/Suffolk market alone, and 34 more in the Hudson Valley. One party could own no more than 7 stations in either of those markets, leaving 67 other stations just in these two markets").

<sup>11</sup> See Order, 31 FCC Rcd at 9904 ¶ 103.

<sup>12</sup> See Letter from David Oxenford on behalf of Connoisseur Media, LLC, MB Docket Nos. 14-50, 09-182, at 1-2 (Aug. 5, 2016) ("If a seller cannot be assured that there is a presumption that the acquisition will occur, and that the transaction can be completed in a timely fashion, that seller simply will not enter into a deal.").

<sup>13</sup> See, Letter of Steven Price, Townsquare Media, Inc., MB Docket Nos. 14-50, 09-182 (Aug. 10, 2016) (supporting Connoisseur's proposal and discussing difficulty of completing transactions in embedded markets due to the current embedded/parent analysis).